

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ABN AMRO MORTGAGE GROUP, INC., :

Plaintiff,

-against-

NATIONAL SETTLEMENT AGENCY, INC.,
STEVEN M. LEFF, RACHEL M. LEFF and
RICHARD A. LEFF,

Defendants.

Case No. 07-_____

AFFIDAVIT OF LORIE MILLER IN
SUPPORT OF ABN AMRO
MORTGAGE GROUP, INC.'S
MOTION FOR AN ORDER OF
ATTACHMENT, TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND
ORDER ALLOWING EXPEDITED
DISCOVERY

State of Michigan)
) ss.:
County of Wayne)

Lorie Miller, being duly sworn, deposes and states the following under penalty of perjury:

1. I am an Investigations Team Leader in the Quality Assurance Department of ABN AMRO Mortgage Group, Inc. (“AAMG”). In that capacity, I affirm that the within facts are based on my personal knowledge, unless otherwise stated upon information and belief.

2. I submit this affidavit in support of AAMG's Order to Show Cause why an order of attachment should not be issued against the assets of defendants National Settlement Agency, Inc. ("NSA"), NSA's President, Steven M. Leff ("Steven Leff"), and NSA's Chief Executive Officer Rachel M. Leff ("Leff") (collectively, the "Defendants"), among other relief.

3. AAMG is in the business of originating and servicing residential mortgage loans. This lawsuit grows out of NSA's agreement and representation to serve as AAMG's closing agent for seven such mortgage loans (collectively, the "Mortgage Loans") for closing scheduled

to occur in April through July 2007. As closing agent, NSA was supposed to use funds that had been wired into one of NSA's escrow accounts by AAMG solely and exclusively to pay off the existing liens and to make other payments at closing solely in accordance with AAMG's instructions.

4. In furtherance of closing the seven Mortgage Loans described below, AAMG wired funds totaling no less than \$2,261,744.10 in trust to one of NSA's accounts at the JP Morgan Chase Bank, among others: "National Settlement Agency, Inc., Attorney Escrow Funding Account" Account No. 904613917, ABA No. 021000021; and "National Settlement Agency, Inc., Attorney Funding Account - Gen," Account No. 987096757765, ABA No. 021000021, among others (collectively, the "Escrow Accounts"). Attached as Exhibit A are screen shots reflecting wire confirmations for these transfers.

5. In connection with the Mortgage Loans, AAMG also provided NSA with written closing instructions, directing NSA and its agents to disburse loan funds at each respective closing to the beneficiaries that AAMG and its borrower had designated. As an example, a copy of written closing instructions for one of the Mortgage Loans is attached as Exhibit B.

6. NSA did not follow AAMG's closing instructions, as several payees that should have been paid at closing were later discovered to be unpaid.

7. In or about the end of July 2007, Steven Leff advised Kevin P. Corbin, AAMG's Vice President and Counsel, that funds AAMG had wired into NSA's Escrow Accounts had been embezzled by an NSA employee, specifically affecting the closing of mortgage loans relating to the Kramer Mortgage (as described below), the Nelson Mortgage (as described below), and the Alcantara Mortgages (as described below).

8. As described in the accompanying Declaration of Omar A. Shakoor, NSA breached its agreement with AAMG, because the Defendants illegally and without authorization took funds that AAMG had wired into one of NSA's Escrow Accounts and used those funds for their own use, purposes, and interests. I understand that, partially as a result, Steven Leff has been arrested and charged with violating a criminal statute against such misapplication of escrowed funds.

9. The details of the seven Mortgage Loans are described below.

1. The Kramer Mortgage (Loan No. 655368628)

10. AAMG agreed to make a loan to Kenneth and Nicole Kramer ("Kramer") in the amount of \$413,000, to be secured by a mortgage on the real property located at 94-32 Magnolia Court, Unit 3B, Ozone Park, New York 11417. Defendants agreed to act as the closing agents for this mortgage.

11. The closing for the Kramer Mortgage transaction occurred on or about April 16, 2007. AAMG wired \$413,275.05, the net amount to be disbursed at the closing, into one of NSA's Escrow Accounts and provided Defendants with specific instructions for its disbursement to Kramer and other payees. See Exhibit A.

12. Upon information and belief, Defendants took control and dominion over the balance of \$413,275.05 and, without authorization, used those funds for their own personal use and interests instead of disbursing this money as AAMG had directed. Although closing checks were issued for the Kramer Mortgage, as a result, upon information and belief, of Defendants' unauthorized taking and misapplication of escrowed funds, there were insufficient funds to satisfy all of the checks issued. The funds wired have not been used to pay off prior liens or complete the closing of AAMG's loan.

2. The Nelson Mortgage (Loan No. 656243674)

13. AAMG agreed to make a loan to Glenn W. Nelson and Kerri R. Lubell-Nelson (“Nelson”) in the amount of \$417,000, to be secured by a mortgage on the real property located at 95 Upper Lakeshore Drive, Katonah, New York 10536. Defendants also agreed to act as the closing agents for this mortgage.

14. The closing for the Nelson Mortgage transaction occurred on or about June 18, 2007. AAMG wired funds totaling \$420,878.54 into one of NSA’s Escrow Accounts and provided Defendants with specific instructions for its disbursement to Nelson and other payees. See Exhibit A.

15. Upon information and belief, Chase Bank, which was disbursed \$201,833.00, is the only party that has been paid with respect to the closing. Defendants took control and dominion over the balance of \$219,045.54 and without authorization used those funds for their own personal use and interest instead of disbursing this money as AAMG had directed. While closing checks were issued for the Nelson Mortgage, as a result, upon information and belief, of Defendants’ unauthorized taking and misapplication of escrowed funds, there were insufficient funds to satisfy the checks issued. With the exception of the \$201,833.00 payment to Chase, the funds wired have not been used to pay off prior liens or complete the closing of AAMG’s loan.

3. The Alcantara Mortgages (Loan Nos. 656123577 and 656203609)

16. AAMG agreed to make two loans to Carlos and Rosa Alcantara (“Alcantara”), to be secured by a mortgage on the real property located at 44 Autumn Circle, Yonkers, New York 10703. The amount of the first loan was \$500,000.00 (the “First Alcantara Mortgage”). The amount of the second loan was \$62,500.00 (the “Second Alcantara Mortgage”) (collectively, the “Alcantara Mortgages”). Defendants agreed to act as the closing agents for this mortgage.

17. The closing for the Alcantara Mortgages occurred on or about July 6, 2007. AAMG wired the net amounts to be disbursed at the closing for each of the loans, totaling \$498,671.02 for the First Alcantara Mortgage and \$63,071.39 for the Second Alcantara Mortgage, into one of NSA's Escrow Accounts and provided Defendants with specific instructions for its disbursement to Alcantara and other payees. See Exhibit A.

18. While closing checks were issued for the Alcantara Mortgage, as a result, upon information and belief, of Defendants' unauthorized taking and misapplication of escrowed funds, there were insufficient funds to satisfy the checks issued. The funds wired have not been used to pay off prior liens or complete the closing of AAMG's loan.

4. The Carnevali Mortgage (Loan No. 6563122144)

19. AAMG agreed to make a loan to Marc Carnevali ("Carnevali") in the amount of \$584,000, to be secured by a mortgage on the real property located at 210 Lafayette Street, Unit 6E, New York, New York 10012. Defendants agreed to act as the closing agents for this mortgage.

20. The closing for the Carnevali Mortgage transaction occurred on or about July 6, 2007. AAMG wired \$582,096.36, the net amount to be disbursed at the closing, to NSA Account No. 904613917 and provided Defendants with specific instructions for its disbursement to Carnevali and other payees. See Exhibit A.

21. While closing checks were issued for the Carnevali Mortgage, as a result, upon information and belief, of Defendants' unauthorized taking and misapplication of escrowed funds, there were insufficient funds to satisfy the checks issued. The funds wired have not been used to pay off prior liens or complete the closing of AAMG's loan.

5. The Schnatter Mortgage (Loan No. 656550325)

22. AAMG agreed to make a loan to Scott and Traci Schnatter ("Schnatter") in the amount of \$450,000, to be secured by a mortgage on the real property located at 323 Charles Avenue, Massapequa, New York 11762. Defendants agreed to act as the closing agents for this mortgage.

23. On or about July 13, 2007, AAMG wired \$446,334.82, the net amount to be disbursed at the closing, to NSA Account No. 987096757765, see Exhibit A, and provided Defendants with specific instructions for its disbursement to Schnatter and other payees.

24. The closing for the Schnatter Mortgage transaction occurred on or about July 16, 2007, and while closing checks were issued, as a result, upon information and belief, of Defendants' unauthorized taking and misapplication of escrowed funds, there were insufficient funds to satisfy the checks issued. The funds wired have not been used to pay off prior liens or complete the closing of AAMG's loan.

6. The De Carlo Mortgage (Loan No. 656597616)

25. AAMG agreed to make a loan to Joseph and Jennifer De Carlo ("De Carlo") in the amount of \$300,000, to be secured by a mortgage on the real property located at 2 Millburn Road, South Setauket, New York 11720. Defendants agreed to act as the closing agents for this mortgage.

26. On or about July 24, 2007 AAMG wired funds totaling \$300,491.25 for the closing to Account No. 987096757765, see Exhibit A, and provided Defendants with specific instructions for its disbursement to De Carlo and other payees. Exhibit B.

27. The closing for the De Carlo Mortgage transaction occurred on July 25, 2007, and while closing checks were issued, as a result, upon information and belief, of Defendants' unauthorized taking and misapplication of escrowed funds, there were insufficient funds to pay

checks totaling \$39,250.00. The funds in that amount that were wired have not been used to pay off prior liens or complete the closing of AAMG's loan.

28. The total amount of unpaid items from the Mortgage Loans described above is no less than \$2,261,744.10. This amount exceeds all known counterclaims.

29. AAMG does not know the current location of its funds that were transferred without its authorization from one of the Escrow Accounts to NSA's operating account or to Steven Leff personally. At the end of July 2007, Steven Leff reported to Kevin Corbin that he did not know the location of the funds. The efforts of AAMG's Quality Assurance Department to determine the location of the funds has been unsuccessful because AAMG does not possess the necessary documentation.

30. Upon information and belief, NSA, under apparent direction and control of its President Steven Leff, has already, with intent to defraud AAMG, assigned, disposed of, encumbered, secreted, and/or removed from the state AAMG's mortgage disbursement funds intended to be paid-out at various closings described in the attached complaint. A copy of that Complaint is attached as Exhibit C. For this reason, AAMG believes that NSA and its officers are about to further dissipate this money, thus necessitating an order of attachment.

31. No prior request for this or similar relief has been made in this action.

WHEREFORE, it is respectfully requested that this court grant AAMG's motion for an order of attachment in the amount of \$2,261,744.10, plus interest, costs, fees and disbursements, together with such other relief as the court deems proper.



Lorie Miller
for ABN AMRO Mortgage Group, Inc.

Sworn to before me
this 28th day of August, 2007

Carm P. Ceballos
Notary Public, WAYNE COUNTY, MI
My commission expires 7-27-11
(acting in Washtenaw County)